

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Oakland, CA)

WESTERN POWER AND EQUIPMENT
CORP. d/b/a GCS WESTERN POWER
AND EQUIPMENT

Employer

and

Case 32-RC-5158

OPERATING ENGINEERS LOCAL Union NO. 3

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, an Oregon corporation with a facility located at 25886 Clawiter Road, Hayward, California 94545, is engaged in the retail sales and servicing of construction equipment. During the last 12 month period, the Employer had gross revenues in excess of \$500,000, and, during that same period, the Employer purchased and received at locations in the state of California equipment valued in excess of \$50,000 directly

¹ The parties' briefs have been duly considered.

from suppliers located outside the state of California. The parties also stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. Petitioner claims to represent certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The Petitioner seeks to represent a unit consisting of all full-time and regular part-time maintenance employees employed by the Employer at its shop at 25886 Clawiter Road, Hayward, including but not limited to mechanics, shop personnel, and parts personnel; excluding all sales personnel, office clerical employees, guards and supervisors as defined by the Act.² In a post hearing stipulation, the parties agreed that the petitioned for unit is an appropriate unit for collective bargaining under Section 9(b) of the Act. The Employer contends, however, that the shop foreman, James Suddarth, is a statutory supervisor within the meaning of Section 2(11) of the Act and must be excluded from the Unit. The Petitioner contends that Suddarth is not a supervisor under the Act and should be included in the unit. For the following reasons, I find that Suddarth will be allowed to vote subject to challenge.

THE FACTS

The Employer operates a retail construction equipment sales, leasing and service location in Hayward, California. The Employer services and repairs construction equipment at both its Hayward facility and at customer sites via its field service mechanics. The Employer currently

² Hereafter the petitioned for bargaining unit will be referred to as the Unit.

employs two field service mechanics, three shop mechanics (one of whom, Rudy Carlotti, is designated as a leadman), and four parts employees.

The person in charge of the Hayward facility is Bob Buxton. He is the Store Manager and Vice President. Prior to May 16, 2003, Greg Fabian was the Employer's Service Department Manager, and he was responsible only for the service department. He reported directly to Buxton, and he was the immediate supervisor of Shop Foreman Jim Suddarth. The Employer eliminated the Service Department Manager position on May 16, 2003, and Fabian no longer works for the Employer. Effective May 16, 2003, the Employer created a new position, Product Support Manager, and the position was awarded to James Hallen. The Product Support Manager oversees both the parts and service departments, and therefore has a broader area of responsibility than did the Service Department Manager position.³ Hallen reports directly to Buxton and directly supervises both Shop Foreman Suddarth and Parts Department Manager Al Gonsalves.⁴

Suddarth makes \$26.51 per hour, which is 10-15% more than the other mechanics. He takes part in the same 401(k) and health insurance plans as the mechanics, and pays the same premiums for the health insurance plan. Although the Employer's mechanics generally work between 8 am and 4:30 pm., Suddarth generally works from 7 am to 3:30 pm. Like the mechanics, he receives overtime when working more than 8 hours. Suddarth punches a time card, as do the mechanics. He and the mechanics wear the same uniforms, and the Employer provides each of them with cell phones.

³ The product support manager is not a skilled mechanic position and James Hallen is not trained as a mechanic. Hallen testified that he has no plans to fill the service manager position.

⁴ After the close of the hearing, the parties stipulated that Gonsalves effectively recommends hiring, discipline and pay increases for parts department employees, and they stipulated, and I find, that Gonsalves is a supervisor as defined by Section 2(11) of the Act.

Suddarth is responsible for preparing written work orders and for assigning the work to the shop and field service mechanics each day.⁵ He communicates the assignments to mechanics orally in his office and keeps track of the assignments on an assignment board. According to Suddarth, he typically assigns work based on a mechanic's availability; i.e., when a mechanic has finished with one job, the mechanic takes the next available job. Suddarth did indicate that on some occasions he has deviated from the "next available" system based on a mechanic's training. As an example of when he would deviate from the "next available" system, Suddarth explained that if an excavator repair was the next job and apprentice Austin Stinger was the next available mechanic, Suddarth would bypass Stinger if he had not taken the class on excavator repair. Suddarth also indicated that he deviated from the "next available system" in other situations, but he did not identify in what circumstances he would do so.⁶ Hallen testified in conclusionary terms that Suddarth schedules work by using the manufacturers warranty book to determine how long given repairs should take and then by assessing whether a given employee can perform the necessary repair work.

Suddarth, whose office is just off the service department floor, periodically observes the progress of the mechanics' work, and if the work has not been performed correctly, he instructs the mechanic to do the work in a different manner. On occasion, Suddarth also performs this corrective work himself. Leadman Carlotti also assigns and corrects work, but he performs mechanic's work 90% of the time. Neither Suddarth nor Carlotti checks the work of the field mechanics. Suddarth does not tell either field mechanics or the shop mechanics how long it should take them to perform a given job.

⁵ Prior to May 16, 2003, the service manager was responsible for assigning work to the mechanics.

⁶ The record does not establish whether Suddarth implemented all or a part of this work assignment system, or whether he was merely following well established practices and procedures that were already in place.

The Employer has not told Suddarth that he has any new responsibilities as a result of the Employer's May 2003 creation of the Product Service Manager position, and Suddarth did not receive a pay increase as a result of the change in the Employer's hierarchy. Prior to May 16, 2003, he spent 50% of his time on administrative work and 50% of his time performing repair work. Suddarth estimates that since May 16, 2003, he typically spends 80% of his time performing administrative work. Suddarth testified that he assumes Hallen will pick up some of Suddarth's administrative work up once Hallen becomes more experienced.

Suddarth approves the mechanics' time cards on a daily basis. Hallen testified that employees are instructed to inform Suddarth if they are going to be absent from work on a given day due to illness; although, he was unable to point to any written requirements that employees contact Suddarth. The only example provided by Hallen was that a mechanic who had injured his knee notified Suddarth that he would be missing work and Suddarth then notified Hallen, per the company's procedures. Hallen admitted that this was not a situation where Suddarth had actually made the decision to grant the employee time off, and that Suddarth was merely providing information up the chain of command. Field Mechanic Michael Sills, Jr. testified that employees have been instructed to call a manager directly if they will not be at work due to illness. Sills also testified that to request time off, employees submitted paperwork to the front office and either Buxton or the service manager approved it. Suddarth has not approved any requests for time off.

Suddarth is also responsible for giving price quotes to customers. The Employer has fixed rates for labor and passes along the costs of parts. Therefore, the cost of a repair is mainly determined by the amount of labor necessary to perform the repair. To calculate the length of time needed for a repair, Hallen testified that Suddarth consults the manufacturer's warranty

guidelines (which identify how many hours the manufacturer will pay for the labor involved in the repair work). Suddarth testified that he does not need to consult the manufacturers warranty book, because he knows how long repair work takes. When Suddarth is not there, other mechanics accept orders from customers for work, process the paperwork and send jobs out for billing. When Suddarth is not at the facility, leadman Carlotti, and, apparently on some occasions, other mechanics, will give oral quotes to customers. When the mechanics give quotes to customers, Suddarth abides by the quotes given by the mechanics.⁷

According to Suddarth, after receiving a quote for extensive repair work, customers occasionally want to know what lesser work can be done for a lesser amount. When this occurs, Suddarth indicates the various things that could be done for a lesser amount. If the customer disagrees on the price, Suddarth testified that the disagreement was resolved by Fabian, and now would be resolved by Hallen. Suddarth does not have the authority to lower the price, except for one of the Employer's largest customers, for whom there is a set reduced price. If a repair takes longer than the amount of time quoted, Suddarth adjusts the work order so that the amount billed to the customer is the same as that quoted. A manager must then approve the work order before it can be sent out for billing. In instances where the actual labor amount exceeded the quoted labor amount, Suddarth testified that the manager may negotiate with the customer over the price billed to the customer, but Suddarth may not do so.

Buxton testified in conclusionary terms that Suddarth had the authority to negotiate over the price vendors charge for parts. The Employer has a vendor list that it has been using for many years, and Suddarth does not usually get parts quotes in advance from vendors. If he does, he makes sure the quoted parts price is the price listed in the invoice. Suddarth denied that he

⁷ While the other mechanics are not supposed to deal with customers, they often do so because customers want to talk directly to mechanics to find out how long a repair will take.

negotiated over prices with vendors, and states that he merely relied on the price quoted by the vendor. According to Suddarth, if a vendor quoted a price that he thought was incorrect, he would contact another vendor from the Employer's list. However, this situation has not occurred in the last year.⁸ After the Employer receives an invoice from a vendor, Suddarth approves the invoice and assigns the invoice to a specific work order via an "invoice payment pick ticket." The invoice payment pick ticket is then approved by a manager.

According to Hallen, Suddarth has interviewed mechanics, and made recommendations as to which applicants should be hired. Hallen had no first hand knowledge of such actions by Suddarth and could give no examples or details of Suddarth's role in such decisions. Suddarth denied taking part in the interview of any mechanics, or in making any recommendations regarding their hire. Suddarth testified that he reviewed resumes and informed the previous Service Department Manager what he thought about the resume information. There is no evidence showing that the previous Service Department Manager relied on Suddarth's input rather than making his own independent determination.

Suddarth has not fired anyone, has not promoted anyone, has not recommend anyone for promotion, has not transferred anyone, has not laid off or recalled anyone, has not given any bonuses or awards, has not been involved in resolving employee disputes, and does not attend management meetings. Suddarth testified that he issued one verbal reprimand six years ago when an employee created an unsafe condition.

ANALYSIS AND CONCLUSIONS

Section 2(11) of the Act defines a supervisor as one who possesses "authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances,

⁸ In its brief, the Employer characterizes Suddarth's going to another vendor as a type of negotiating over prices.

or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” The possession of any one of these primary indicia of supervisory authority, as specified in Section 2(11) of the Act, is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest, and requires independent judgment in a manner which is more than routine or clerical. See *Harborside Healthcare, Inc.*, 330 NLRB No. 191 (2000); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). However, the exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on employees. See *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985); *Advanced Mining Group*, 260 NLRB 486, 507 (1982). The Board has a duty not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. See *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Moreover, because supervisory status removes individuals from some of the protections of the Act, only those personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” *S.Rep.No. 105. 80th Cong. 1 Sec. 4* (1947); *Ten Broeck Commons*, 320 NLRB 806, 809 (1996). Finally, the Board directs that supervisory status not be found “whenever the evidence is in conflict or otherwise inconclusive on a particular indicia.” *Phelps Community Medical Center*, 295 NLRB 486 (1989).

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 121 S.Ct. 1861 (2001); *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Tucson Gas and Electric Co.*, 241 NLRB 181 (1979). To meet this burden the party asserting supervisory status must

provide sufficient detailed evidence of the circumstances surrounding the alleged supervisor's decision making process in order to demonstrate that the alleged supervisor was exercising the degree of discretion or independent judgment that is necessary to establish supervisory status. *Crittenton Hospital*, 328 NLRB 879 (1999);⁹ and *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000).¹⁰

In this case, the Employer contends that Suddarth possesses and exercises Section 2(11) authority, while the Union contends that he is not a supervisor within the meaning of the Act. I note that there is some evidence indicating that Suddarth possessed and/or exercised some of the types of authority that may constitute supervisory authority. As set forth in greater detail below, I have concluded that I cannot make a determination of Suddarth's supervisory status based on the record evidence, because it contains conflicting testimony on some issues and lacks sufficient detailed evidence regarding the type and degree of discretion that Suddarth exercised in carrying out his authority. Therefore, Suddarth will be permitted to vote subject to challenge.

Primary Indicia of Supervisory Authority

The record establishes that Suddarth has no authority to hire, discharge, transfer, suspend, layoff, recall or effectively recommend such actions. Although Suddarth issued one verbal warning, that action occurred six years ago, and the evidence does not establish how, if at all, that verbal warning was documented or was relied on by the Employer. In any event this isolated instance is insufficient to establish that Suddarth is a supervisor. *Kanawha Stone Co.*, 334 NLRB 235 (2001).

⁹ A further reason for requiring details about the alleged supervisor's decision making process is that independent judgment cannot be found where decisions are strictly regulated by specific employer policy. *Western Union Telegraph Co.*, 242 NLRB 825, 827 (1979). Thus, absent evidence regarding the nature and scope of the employer's policies, it would often not be possible to determine whether an alleged supervisor was actually exercising significant discretion.

¹⁰ See also *Sears, Roebuck & Co.*, 304 NLRB 193 (1991); *Quadrex Environmental Co.*, 308 NLRB 101 (1992), which also reject the use of mere inference or conclusionary statements without supporting evidence to establish supervisory status.

The Employer takes the position that Suddarth is a statutory supervisor because he has supervisory authority related to the assignment and direction of other mechanics' work. The record contains contradictory evidence regarding the role that Suddarth plays when assigning work to the mechanics. The Employer contends that Suddarth assigns work to the mechanics in the service department and that he uses his independent judgment to evaluate the work and skill level of the mechanics before making the assignments. The Employer's evidence of Suddarth's authority is based solely on the testimony of its product support manager, James Hallen. At the time of the hearing in this case, Hallen had only been employed by the Employer for about one month, and he was unable to provide any examples in which Suddarth made an assignment based on his judgment of a mechanic's work. The Board will not find that a purported supervisor exercises the degree of discretion necessary to establish supervisory status unless there is specific evidence regarding how that person makes his/her "supervisory" decision; that is, there must be evidence showing what factors the purported supervisor considers and how much the decision is based on employer imposed guidelines and established practices. *See Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999).

The evidence provided by Suddarth is also not conclusive regarding the level of independent judgment he exercises. It is clear that Hallen does not have expertise regarding mechanical work. Although Suddarth states that he was not told that his duties had changed or authority had increased, he testified that he did significantly increase the amount of time he spends on administrative matters and greatly reduced the amount of time he spends performing mechanic's work. It is not clear on the record, but apparently, this change in Suddarth's duties was decided on by Suddarth himself. With regard to assigning work to others, it is unclear whether Suddarth is assigning work consistent with the Employer's past practice, or whether

Suddarth modified or even replaced the Employer's former system of assigning work with his own system. With regard to individual assignments, Suddarth testified that on some occasions he did not just automatically assign the work based on who was available. He indicated that he might not give an employee a particular assignment based on what training the employee had had, or based on other factors that Suddarth did not describe. Thus, the record does not reveal whether Suddarth is subjectively evaluating the employees' levels of skills and experience, or if he is considering the objective fact of whether or not a particular employee has had a training class covering the work in question. As such, it cannot be determined on this record that Suddarth exercises the type of discretion required to confer supervisory status under Section 2(11). *See Quadrex Environmental Co.*, 308 NLRB 101, 101 (1992) (finding assignment of tasks to work crew employees demonstrates nothing more than the knowledge expected of experienced persons regarding which employees can best perform particular tasks).¹¹

The Employer also contends that Suddarth directs and oversees the work he assigns to the shop mechanics on a day-to-day basis.¹² The record shows that Suddarth periodically observes the progress of ongoing repair jobs, and that Suddarth sometimes directs the mechanics to correct their errors, or decides to fix the work himself. I do not find this authority is sufficient to establish supervisory status under the Act. Initially, I note that authority to merely inspect work and order it do be redone, by itself, does not confer supervisory status. *See Somerset Welding & Steel*, 291 NLRB 913, 913-14 (1988). Importantly, the record does not demonstrate whether Suddarth's oversight of the mechanics requires the use of independent judgment. Instead, the

¹¹ The Employer's reliance on *Liquid Transporters, Inc.*, 250 NLRB 1421, 1425 (1980), does not compel a different result. There, shift leaders also had the authority to transfer employees from one job to another within their respective departments, to send employees home early, and to call in employees on overtime to replace individuals who are absent, as well as make oral and written recommendations about employees' work performance which were reviewed and given weight by the Employer. There is no evidence that Suddarth has any similar authority here.

¹² Suddarth does not review the work of the field mechanics.

record indicates that the role that Suddarth plays observing and correcting mechanic's work is similar to the role played by leadman Carlotti. I therefore find that the evidence does not establish that Suddarth's direction of the employees' work is sufficient to establish that he exercises the degree of independent supervisory judgment that is necessary to establish supervisory status under the Act. *See S.D.I. Operating Partners, L.P.*, 321 NLRB 111(1996) (distinguishing traditional leadman authority of assigning work based on prior experience from supervisory authority requiring actual independent judgment); *See also Byers Engineering Corp.*, 324 NLRB 740, 741 (1997)("an employee does not become a supervisor merely because he has greater skills and job responsibilities than fellow employees or because he gives some instructions or minor orders").

Lastly, the Employer contends that Suddarth's approval of the mechanics' time cards supports a finding that he is a supervisor. While it is true that Suddarth approves the times cards for mechanics in the service department, it appears that this is done in a "routine, clerical, perfunctory, or sporadic manner," and is not a sufficient basis to confer supervisory status on an employee. *See Chicago Metallic Corp.*, 273 NLRB 1677 (1985).

Secondary Indicia of Supervisory Authority

In addition to the duties described above, the Employer points to some secondary indicia to support its contention that Suddarth is a statutory supervisor. In particular, the Employer contends that Suddarth's authority to pledge credit, negotiate prices with vendors, approve expenditures, and give price quotes to customers for repair work suggest that Suddarth is a supervisor. The Employer also argues that because the mechanics would be without direct supervision if Suddarth is not found to be a supervisor, the Board should find that he is a supervisor.

Secondary indicia of supervisory authority may be relied upon only in a close case where some evidence indicates the existence of primary indicia. See *GRB Entertainment*, 331 NLRB 320 (2000); *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993). When there is no evidence that at least one of the primary statutory indicia of supervisory status exists, the existence of secondary indicia, no matter how prevalent, is insufficient to establish supervisory status. As noted above, in this case the evidence regarding the primary indicia is contradictory, conclusory or incomplete. In these circumstances, where I cannot make a definitive determination of the primary indicia, I have concluded that it would not be appropriate to rely on the secondary indicia raised by the Employer. See *S.D.I. Operating Partners*, 321 NLRB at 112, *J.C. Brock Corp.*, 314 NLRB 157, 160 (1994); *St. Alphonsus Hospital*, 261 NLRB 620, 626 (1982). However, even if I had considered the evidence of secondary indicia, for the reasons set forth below, I would find that the Employer's evidence related to the secondary indicia is insufficient to establish that Suddarth is a statutory supervisor.

Negotiating Prices from Vendors

The Employer contends that Suddarth has the authority to contact vendors and negotiate prices. The Employer has an established vendor list, and the Employer can point to no instances where Suddarth has sought parts or services from a vendor outside of the Employer's established list of vendors. The Employer can likewise point to no instances when Suddarth actually negotiated the price of parts with vendors; rather, it argues that Suddarth's authority to not use a particular vendor who quotes an erroneous price is tantamount to negotiating. Under these circumstances, I do not find this to be negotiating prices, and I conclude that this evidence does not establish that Suddarth is a supervisor under Section 2(11) of the Act.

Adjusting Quotes to Customers

The Employer also contends that Suddarth has the authority to determine and adjust the prices quoted to customers for repair work. As noted above, the “quotes” given to customers are estimates as to the amount of time it will take a mechanic to perform a certain repair. The Employer has a book that sets forth the time that it should take to complete a repair. Although Suddarth says he does not refer to the book because he knows how long it will take for the various repairs, the record does not establish that Suddarth’s estimates vary significantly from the hour projections in the Employer’s book. The Employer did not cite any such instances, and admitted that it knew of no such instances within the month prior to the hearing. I also note that the leadman and the shop and field mechanics, have given repair time estimates to customers. Additionally, when a mechanic gives a customer an estimate for how long a repair will take, Suddarth abides by the mechanic’s estimate.¹³ In light of the above, I find that this evidence does not establish that Suddarth is a supervisor or that he is aligned with management. *Iowa Industrial Hydraulics*, 169 NLRB 205 n. 1, 210-211 (1968); *Progress Industries* 285 NLRB 694 (1987); and *White Cross Stores*, 186 NLRB 492, 497, 511-514 (1970)

Suddarth also testified that if a given job goes over the dollar figure quoted, he manually changes the amount charged to the customer to comport with the amount quoted. This adjustment is then subject to the approval of a manager. Given the confines of management approval and the routine nature of equating the billing amount with the quote amount, I find that the adjustment of the billing amount to the original quoted price (which may have been given by one of the mechanics) does not provide secondary evidence that Suddarth is a supervisor under Section 2(11).

¹³ The evidence does not establish whether Suddarth established all or a part of this practice or was merely adhering to a previously established practice.

Absence of Direct Supervision

Lastly, the Employer also contends that a finding that Suddarth is not a supervisor would leave the service department with four service mechanics, two leads and no effective supervisor. Hallen's lack of experience and expertise as a mechanic was also relied on by the Employer. Given the relatively brief period for which the service department has operated without a service manager, the fact that Suddarth was not told that his job duties would change as a result of the "reorganization," the fact that there are no examples of Suddarth exercising supervisory authority, and the fact that Hallen's office is located near the service department work area, I am unable to conclude that the Employer's "reorganization" would leave the service department without a supervisor. Moreover, the lack of direct supervision with applicable technical skills is insufficient to establish the supervisory status of the shop foreman. *See J.C. Brock Corp.*, 314 NLRB 157 (1994) (unrealistic result of 40 employees to 1 supervisor not determinative of supervisory status in the absence of statutory indicia).

CONCLUSION

In sum, given the contradictory and incomplete evidence concerning Suddarth's exercise of discretion, I cannot find on this record as a whole, that Suddarth is a Section 2(11) supervisor. Under these circumstances, Suddarth shall be permitted to vote subject to challenge. This finding is particularly warranted where, as here, the Employer's recent "reorganization" has changed managerial and supervisory assignments.

Based on the foregoing and the record as a whole, I shall direct an election among the following employees:

All full-time and regular part-time maintenance employees employed by the Employer at its shop at 25886 Clawiter Road, Hayward, including but not limited to mechanics, shop personnel, and parts personnel; excluding all sales personnel, office clerical employees, guards and supervisors as defined by the Act.

There are approximately ten employees in the above-described unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹⁴ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by OPERATING ENGINEERS LOCAL UNION NO. 3.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759

¹⁴ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

(1969); North Macon Health Care Facility, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **August 13, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington, D.C., by **August 20th, 2003**.

DATED AT Oakland, California this 6th day of August, 2003.

Alan B. Reichard
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32-1260

177-8580-7500